

Goods and Services Tax – Unit title bodies corporate

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IS 23/08

This interpretation statement explains how GST applies to transactions between a unit title body corporate, its members and third-party suppliers.

All legislative references are to the Goods and Services Tax Act 1985 (the **GST Act**) unless otherwise stated.

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Summary | Whakarāpopoto

1. This interpretation statement explains the consequences of registering for GST for a unit title body corporate (UTBC) and the GST treatment of transactions with its members and third parties.
2. Under both the Unit Titles Act 2010 (UTA 2010) and the GST Act, a UTBC is a separate legal person to its members. The GST Act includes specific rules that apply to UTBCs.¹ From a GST perspective, a UTBC is treated as making supplies to its members for consideration (in the form of levies). It also transacts with third parties receiving supplies and providing consideration. A UTBC can generally choose whether to register for GST.
3. While a UTBC will have a taxable activity, it will generally not become liable to register for GST. This is because the value of supplies it makes to its members is not counted towards the \$60,000 GST registration threshold. However, a UTBC can voluntarily register for GST. If it chooses to register, it must make a one-off output tax adjustment when it registers based on the money and investments it holds. A GST-registered UTBC needs to account for output tax on supplies to its members but can generally claim input tax deductions on transactions with third parties.
4. For UTBCs that are registered for GST, this interpretation statement sets out the GST treatment of:
 - goods and services a UTBC acquires before registration;
 - services that a member supplies to a UTBC;
 - a UTBC's supply of manager's accommodation;
 - a UTBC's payments of ground rent and levies it charges to members for ground rent; and
 - one-off payments a UTBC receives, such as settlement payments, court awards, insurance payments and payments from the Ministry of Business, Innovation and Employment (MBIE) under the Leaky Homes Financial Assistance Package (FAP).
5. For these transactions, the Commissioner considers the GST treatment is as follows:
 - A UTBC cannot claim input tax deductions on goods and services acquired before registration, but may claim a deduction under s 21F when pre-registration goods are disposed of, or deemed to be disposed of under s 5(3) on deregistration.

¹ The Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 implemented these rules.

- Supplies of services by a member to a UTBC must be accounted for separately for GST purposes from a UTBC's supplies to that member (for which levies are consideration) even if the consideration for those supplies is set off.
- Whether a UTBC's use of an apartment to supply manager's accommodation will be an exempt supply under s 14(1)(c) of the GST Act depends on whether the manager lives in the apartment as their main residence and whether they have quiet enjoyment, as that term is used in s 38 of the Residential Tenancies Act 1986 (the RTA).
- A landowner's supply of leasehold land by way of rental (being the land on which the unit title development / apartment complex is on) to a UTBC will be an exempt supply to the extent that land is used for the principal purpose of accommodation in a dwelling (s 14(1)(ca)). This is calculated by determining which units are and which are not used for this principal purpose:
 - Under s 5(8A), levies a UTBC raises to pay for ground rent that relate to units used for the principal purpose of accommodation in a dwelling will not be "consideration for taxable supplies". As a result, these levies are not subject to GST.
 - Levies a UTBC raises to pay for ground rent that relate to units **not** used for the principal purpose of accommodation in a dwelling will be consideration for taxable supplies. As a result, these levies are subject to GST.
- Where a UTBC receives court awards and out-of-court settlements, GST consequences may apply if the payment is sufficiently connected to a supply such that it is consideration (or modification of consideration) for that supply. For an explanation of the Commissioner's position on the GST treatment of settlements and out-of-court settlements, see [IS 23/07: GST - Court awards and out-of-court settlements](#).²
- Typically, where a **registered** UTBC receives an insurance payment, the UTBC will have an output tax liability based on the amount it receives (s 5(13)).
- MBIE FAP payments are treated as consideration for a supply of goods and services under s 5(6D). A GST-registered UTBC that receives an MBIE FAP payment will need to include this amount in its GST return for the period. Where an unregistered UTBC receives an MBIE FAP payment, that payment does not make the UTBC liable to register for GST.

² *Tax Information Bulletin* Vol 35, No 7 (August 2023): 72.

Introduction | Whakataki

6. A unit title development is a type of subdivision of land that enables different people to own a defined part of a building. This form of subdivision is typical for apartment complexes. A UTBC is automatically created when a unit title development is set up under the UTA 2010. A UTBC is made up of the unit owners (or members) of a unit title development and is responsible for managing and maintaining the building and providing other services such as arranging building insurance. A UTBC levies its members to pay for the expenses it incurs in meeting its responsibilities.
7. After the High Court decision in *Taupo Ika Nui Body Corporate v CIR*,³ there was some uncertainty as to whether a UTBC could register for GST. Rules enacted in 2016 clarified the law and provided UTBCs with the option to register for GST. These rules also preserved the position UTBCs had historically taken, meaning UTBCs can continue to be registered or unregistered as they choose.
8. This interpretation statement provides guidance on the GST obligations of a UTBC if it chooses to register for GST. It sets out:
 - the legal nature of UTBCs (from [9]);
 - an overview of GST in the context of a unit title development (from [20]);
 - the registration process for a UTBC choosing to register for GST (from [31]); and
 - the GST treatment of specific transactions affecting UTBCs, including the GST treatment of:
 - goods and services a UTBC acquires before registration (from [72]);
 - services that a member supplies to a UTBC (from [75]);
 - manager's accommodation that a UTBC supplies (from [77]);
 - ground rental payments for a unit title development on leasehold land (from [103]); and
 - receiving one-off payments, notably court awards, settlement payments, insurance payments and payments from the Ministry of Business, Innovation and Employment under the Leaky Homes Financial Assistance Package (from [135]).

³ (1997) 18 NZTC 13,147.

The legal nature of UTBCs

9. A UTBC is a legal entity created under the UTA 2010 when multiple owners (unit owners or members) have unit title properties in an apartment building or similar complex (a unit title development). The UTBC is made up of all unit owners and provides a way for individual owners to act together for their common and shared interests.
10. The UTA 2010 sets out the powers and duties of the UTBC and the rights and responsibilities of members. A UTBC will nominate a chairperson and typically establish a body corporate committee among the owners. These people will usually handle the administrative and governance functions as well as the day-to-day operations of the UTBC. However, the UTBC may also employ or engage a body corporate manager to help with these matters.
11. Under the UTA 2010, the UTBC is responsible for managing, maintaining, repairing and organising insurance for the building and the common areas, paying ground rent if the unit title development is on leasehold land, as well as enforcing the body corporate operational rules. Members/owners are required to follow those rules and pay levies to the UTBC.

Property rights and obligations in a unit title development

12. Apartment buildings (or unit title developments) typically consist of three main areas:
 - principal units;
 - accessory units; and
 - common property.
13. In the context of an apartment building, each apartment will typically be a “principal unit”. A unit title development may also include other units (eg for car parks and storage lockers). In some unit title developments, there are accessory units that “belong with” a principal unit. In other cases, car parks can be principal units and owned by persons who do not own an apartment.
14. Everything in a unit title development that is not within a unit is the common property. This could include the foyer or reception area, lifts, stairwells and any external areas such as tennis courts or swimming pools. The common property is owned by the UTBC.⁴

⁴ Section 54(1) of the UTA 2010.

15. The UTBC levies each member using either the member's ownership interest or utility interest based on the units they own and the purpose of the levy:⁵
- Ownership interest is based on the value of the unit relative to other units in the unit title development. It is used to calculate levies for the capital improvement fund.⁶
 - By default, the utility interest is the same as the ownership interest. The UTBC uses it to calculate levies for the operating account, long-term maintenance fund and any contingency fund.⁷ It can assign a different utility interest to different units to reflect their varying costs.⁸ The differences in interest can target a particular service or amenity. For instance, a UTBC may assign higher utility interest to apartments on the top floor of a development to reflect additional costs of plumbing and lifts associated with those apartments.

Relationship between a UTBC and its members

16. Because a UTBC looks like a mutual funding arrangement where funds are pooled and used to pay common expenses, it is sometimes suggested that a UTBC acts as agent for its members.
17. **IS 21/01: GST and agency**⁹ sets out the Commissioner's view on agency. In summary, an agency relationship requires two features:
- **Authority:** The agent must be authorised to act on behalf of the principal to create or affect the legal relations between the principal and a third party, for the relevant supply.
 - **Consent:** Both the agent and the principal must have consented to the authority that is conferred on the agent.
18. The UTA 2010 imposes obligations on a UTBC that are inconsistent with the UTBC acting as the agent of its members:
- A UTBC is a separate legal person with the powers of a natural person (s 77 of the UTA 2010). However, it is only able to act for the purposes of performing its duties or exercising its powers (s 78 of the UTA 2010).
 - A UTBC's duties and powers are set out in the UTA 2010 and listed in s 84. These duties are obligations on the UTBC itself. Although a UTBC may need to

⁵ Section 121 of the UTA 2010.

⁶ Section 38 of the UTA 2010.

⁷ Section 39 of the UTA 2010.

⁸ Section 41 of the UTA 2010.

⁹ *Tax Information Bulletin* Vol 33, No 2 (March 2021): 21.

engage a third party to comply with these obligations (eg to engage a cleaning service for the common property), the UTBC is ultimately responsible for ensuring they are done.

19. As a result, the UTBC typically acts as principal in its dealings. Specific provisions in the GST Act (ss 5(8A) and 21HC) operate consistently with this conclusion.

Historical agency supplies

Historically, there was some confusion as to whether or not a UTBC acted as an agent for its members. This confusion led some people to apply the GST Act as if the UTBC was an agent of its members. After this position was clarified in 2014, in 2016 the law was changed to confirm the correct position that a UTBC is not an agent of its members. Given this historical uncertainty, the 2016 changes included a savings provision (set out in ss 20(3)(hc) and 21HC) to preserve positions taken in periods ending between 1 November 2010 and 3 November 2015 (including taxable periods which include 3 November 2015).

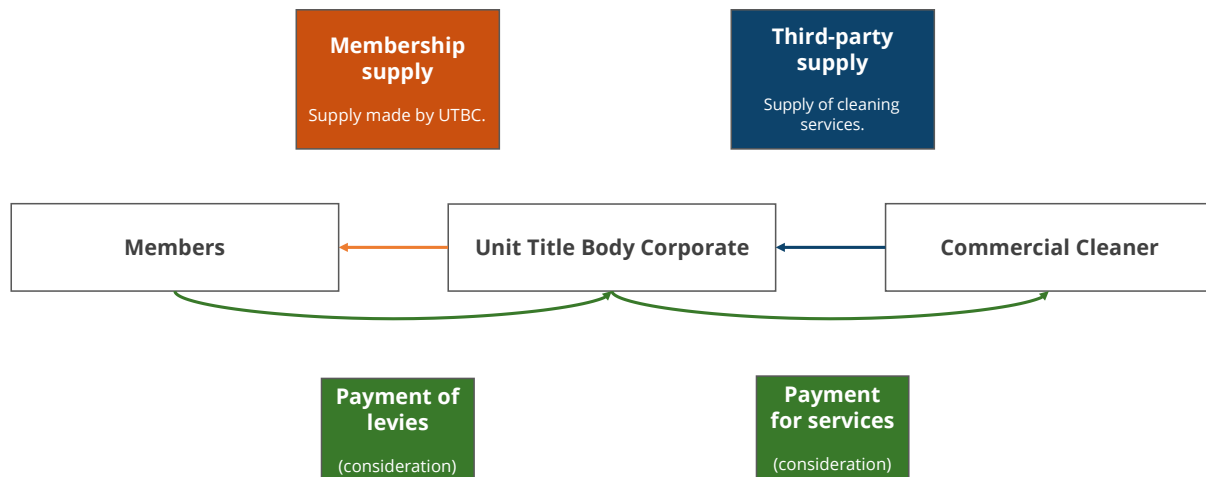
Essentially the savings provision allowed members of unregistered UTBCs to claim an input tax deduction for their portion of supplies acquired from registered third parties. This applies in situations where the member acquired the goods or services to make taxable supplies in their taxable activity. As noted above, this only applied between 2010 and 2015 and so is of historical interest only.

Overview of GST for a unit title development

20. To understand how GST applies to a UTBC, it is useful to first consider the two main transactions that a UTBC is typically involved in:
- The first relates to the UTBC's supply of services to members for levies that it is treated as making under the GST Act.
 - The second involves the UTBC's purchase of supplies from third parties.
21. In this interpretation statement, we refer to these transactions as:
- **membership supplies** – supplies a **UTBC** is treated as making **to its members**; and,
 - **third-party supplies** – supplies **third parties** make **to a UTBC**.
22. Under s 5(8A) of the GST Act, all levy payments from members to a UTBC are consideration for taxable supplies unless they meet certain criteria (discussed from [103]).

23. Figure 1 gives an example of the membership supply and third-party supply in the context of a levy payment to pay for cleaning services from a third-party contractor.

Figure 1: Supplies of cleaning services



24. Figure 1 shows the two distinct supplies are:

- a deemed **membership supply** that the UTBC makes to its members for which the levies are consideration; and
- a **third-party supply** in relation to the commercial cleaner's supply of cleaning services to the UTBC.

Taxable activity

25. Typically, a UTBC will have a taxable activity (meaning it can register for GST) because:
- a UTBC has an activity (relating to performing its duties under the UTA 2010) and it will carry on this activity continuously or regularly; and
 - s 5(8A) of the GST Act treats levies and payments from members to the UTBC as consideration for supplies a UTBC makes.

Liability to register for GST

26. A person making taxable supplies in the course or furtherance of a taxable activity is liable to register for GST under s 51 if the value of its supplies exceeds \$60,000 in any 12-month period. A UTBC will generally not be liable to register because s 51(1B) excludes the value of supplies a UTBC makes to its members in calculating whether it meets the \$60,000 threshold. Given this, a UTBC will generally be able to register for GST but will not be liable to register. This means that registration for a UTBC is voluntary unless it makes over \$60,000 of supplies to third parties.

27. Some unregistered UTBCs may make supplies to third parties. These could include leasing car parks on the common property or providing advertising space on the common property (eg, the exterior of the building) to a business. These UTBCs should be aware of the value of these supplies, as they could cause the UTBC to be required to register for GST, despite s 51(1B).

Effect of registering for GST

28. When a UTBC registers for GST it must file a GST return for each return period. The GST charged on a registered UTBC's taxable supplies is referred to as "output tax". GST that is charged on goods and services that a registered UTBC acquires is called "input tax". Generally, a registered UTBC may claim input tax deductions.¹⁰ A registered UTBC will have to account for GST output tax on its membership supplies and any other supplies it makes. The amount of tax payable is calculated by deducting input tax on third-party supplies from the amount of output tax.
29. A GST registered member of a GST registered UTBC may use their unit in their taxable activity (for instance, if the unit is a café). In this case the member may be able to claim input tax deductions in relation to the membership supplies (for which levies are consideration). The extent to which an input tax deduction is available in relation to the membership supply will typically depend on whether the unit is used for the principal purpose of making taxable supplies. Remember, a GST registered member can only claim input tax deductions in relation to the membership supply if the UTBC is also registered for GST.
30. Against this background of how GST can affect UTBCs, the next section deals with a UTBC's decision as to whether to register for GST.

Registering for GST

31. This section explains the decisions and process for a UTBC that is thinking about whether to register for GST. If your concern is with a UTBC that is already registered for GST, you can skip this section and focus on the GST treatment of specific transactions from [70].
32. The registration process for UTBCs is similar to the registration process for any other person. However, the following specific rules apply only to UTBCs when they register for GST:

¹⁰ Either because the goods and services are used for, or are intended to be used in, making taxable supplies (s 20(3C)) or because the goods and services are acquired for the principal purpose of making taxable supplies (s 20(3CC)).

- A UTBC can only voluntarily register with effect from a date **after** the date it applies for registration (s 51(5B)).
 - When a UTBC registers for GST, it must make an output tax adjustment for a deemed supply equal to the total value held of money, and of assets that are not common property and that the UTBC received as exempt supplies.
 - A UTBC must stay registered for at least 4 years before it can voluntarily deregister (s 52(8)).
33. After summarising the general registration requirements, we discuss how these specific rules operate.

Compulsory and voluntary registration

34. The GST Act provides for both compulsory and voluntary registration. Section 51(1)(a)–(b) sets out the main provisions on compulsory registration. These explain that a person who has a taxable activity must register for GST when the total value of their supplies made in a year is over \$60,000 or it is apparent in a month that they will meet the threshold in the next 11 months. For UTBCs, there are two important exclusions to the \$60,000 threshold. We address these below.

Exclusion for member supplies

35. Typically, a UTBC will not meet the \$60,000 threshold, even if the value of its supplies to members would exceed the threshold. This is because s 51(1B) excludes the value of supplies that a UTBC makes to its members from the \$60,000 threshold:

51 **Persons making supplies in course of taxable activity to be registered**

...

- (1B) For the purposes of determining under subsection (1) the liability of a unit title body corporate to be registered, the value of a supply of a service made by the body corporate to a member is not included in the total value of supplies made in New Zealand by the body corporate.

36. As a result, s 51(1B) gives most UTBCs the choice of whether to register for GST or not; it is voluntary. Unless the UTBC is making supplies to people who are not members that have a total value of over \$60,000, it will not become liable for registration.

Proviso to s 51(1)(a)

37. If a UTBC makes supplies to people who are not members that have a total value of over \$60,000 it still may not become liable for registration. This is because the proviso to s 51(1)(a) may apply:

51 Persons making supplies in course of taxable activity to be registered

- (1) Subject to this Act, every person who, on or after 1 October 1986, carries on any taxable activity and is not registered, becomes liable to be registered—
- (a) at the end of any month where the total value of supplies made in New Zealand in that month and the 11 months immediately preceding that month in the course of carrying on all taxable activities has exceeded \$60,000 (or such larger amount as the Governor-General may, from time to time, by Order in Council declare (see subsection (8)):

provided that a person does not become liable to be registered by virtue of this paragraph where the Commissioner is satisfied that the value of those supplies in the period of 12 months beginning on the day after the last day of the period referred to in the said paragraph will not exceed that amount:

[Emphasis added]

38. The effect of this provision is that if a UTBC makes a one-off supply (or is treated as having made a one-off supply) that would take it over the \$60,000 registration threshold, it is not liable to register if the Commissioner is satisfied the UTBC is not expected to exceed the threshold in the next 12 months. Example | Taura 1 demonstrates this situation.

Example | Taura 1: Deemed supply by an unregistered UTBC

Body Corporate Number 100,000 is an unregistered UTBC. Although it usually collects \$75,000 from members as levies each year, it is not liable to register for GST because supplies that UTBCs make to members are not included in the \$60,000 threshold. Usually the UTBC does not make any supplies to third parties.

One year, Body Corporate Number 100,000 receives a payment of \$100,000 from the Ministry of Business, Innovation and Employment under the Leaky Homes Financial Assistance Package. This \$100,000 is a payment in the nature of a grant or subsidy made on behalf of the Crown, which is treated as being consideration for a supply of goods and services in the course or furtherance of the UTBC's taxable activity under s 5(6D) (discussed from [145]).

However, even though Body Corporate Number 100,000 met the threshold in this year, the Commissioner considers that it is not liable to register. This is because under s 51(1)(a), the Commissioner considers that the value of the supplies in the 12 months after the month in which the UTBC received the payment will not go over the \$60,000 threshold as it generally only makes supplies that are subject to s 51(1B).

Timing of voluntary registration

39. If a person has a taxable activity and does not meet the threshold, they can voluntarily register for GST under s 51(3) of the GST Act. As a UTBC will have a taxable activity, it can choose to voluntarily register under this provision.
40. If a UTBC applies for voluntary registration, it can only register with effect from a date **after** the application date – see s 51(5B):

51 Persons making supplies in course of taxable activity to be registered

...

- (5B) A unit title body corporate that is registered under this Act as a result of an application under subsection (3) made on a date (the application date) on or after the date of introduction of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Bill must be registered with effect from a date after the application date.

Taxable periods and accounting basis

41. If a UTBC decides to register for GST it will need to determine its taxable period and its accounting basis. A registered person pays GST to Inland Revenue periodically, based on their taxable period. Under s 15, the default taxable period is a 2-month period, but a UTBC also has the option of filing monthly or, if its taxable supplies are no more than \$500,000 in a 12-month period, of filing 6-monthly.
42. Where a UTBC registers for GST it will also need to select an accounting basis. The accounting basis determines which period your output tax liabilities or input tax deductions relate to. The two main choices are the invoice basis and payments basis. Under the invoice basis output tax is payable at the time of supply. This is generally the earlier of the time when the person has provided an invoice (ie, taxable supply information) for the supply or when they receive any payment. Under the payments basis, the person accounts for GST output tax once they have received payment for the supply. Example | Taura 2 illustrates the two options.

Example | Taura 2: Recognition of time of supply

Body Corporate Number 200,000 is a registered UTBC with a unit title development in Taranaki consisting of 15 principal units. It registered for GST on a payments basis, and has a 2-monthly taxable period and a March balance date.

On 1 May the UTBC levies its members by providing taxable supply information (previously a "tax invoice") requesting payment by the end of the month (31 May). Five members pay late, in June.

As the UTBC is registered on a payments basis, it will account for the sum of the 10 levies it received in the April–May period. It will then recognise the sum of the five late payments the next period (June–July).

If the UTBC had registered on an invoice basis, it would account for GST on the total amount (the sum of all 15 levies) in the April–May taxable period.

Output tax liability on registration

43. Where a UTBC decides to register for GST, s 5(8AB) requires the UTBC to make a one-off output tax adjustment. Essentially, the section imposes an output tax liability on the UTBC based on the money and investments the UTBC holds on the day it is registered. It does this by treating a UTBC as receiving consideration for a service supplied on the day it becomes registered equal to the total value it holds of money, and of assets (excluding the common property) that it receives as exempt supplies:

5 Meaning of term supply

...

(8AB) For the purposes of this Act, a unit title body corporate is treated as receiving, on the day when the body corporate becomes a registered person (the **registration day**), consideration for a service, supplied on the registration day by the body corporate in the course of its taxable activity, equal in value to the total value held by the body corporate on the registration day of money and of assets that are not common property and were received by the body corporate as exempt supplies.

44. This rule is to prevent a UTBC from accumulating levies from members without returning output tax before it registers for GST and then claiming input tax deductions when it spends those funds after registration.

The deemed supply under s 5(8AB)

45. As noted at [43], under s 5(8AB) the UTBC is treated as receiving consideration for a supply of services in the course or furtherance of its taxable activity equal in value to:
- the total value held by the body corporate on the registration day of money and of assets that are not common property and were received by the body corporate as exempt supplies.
46. For this reason, on the day it registers a UTBC will need to determine the “total value held” of:
- money; and
 - assets that are not common property and that the body corporate received as exempt supplies (typically this would be financial investments).
47. Once the UTBC has determined the “total value held” of the money and assets, it will include this amount in its first GST return.
48. To determine the “total value held”, a UTBC will need to understand:
- the meaning of the word “money” (see [49]);
 - the meaning of the words “assets that are not common property and were received by the body corporate as exempt supplies” (relevant assets) (see from [50]); and
 - the scope of the words “total value held” (see from [60]).

Money

49. Section 2 of the GST Act defines money to include bank notes, postal notes, money orders, promissory notes and bills of exchange. The amounts of money within the bank account(s) established by the UTBC for the funds it is required to maintain under ss 115–119 of the UTA 2010 would typically be “money” that is intended to be included in s 5(8AB).

Assets

50. The GST Act does not define assets. The use of the word “assets” in addition to the word “money” in s 5(8AB) indicates that, for the purposes of this provision, “assets” has a meaning that is distinct from “money”. (Similarly the definitions of both “goods” and “services” in s 2 exclude “money”.)

51. Of relevance to this discussion, the *Oxford English Dictionary* defines an “asset” as “an item of value owned”.¹¹ Further, the External Reporting Board (XRB) defines an “asset” as a present economic resource that the entity controls as a result of past events.¹²
52. From these definitions, at first glance the meaning of “asset” is broad. However, for the purposes of s 5(8AB), it is significantly limited because it:
- does not include the common property; and
 - will only include things that the body corporate receives as an exempt supply.

Exclusion of assets that are common property

53. The GST Act defines common property as having the same meaning as in the UTA 2010. The UTA 2010 definition (s 5(1)) is:

common property means—

- (a) all the land and associated fixtures that are part of the unit title development but are not contained in a principal unit, accessory unit, or future development unit; and
- (b) in the case of a subsidiary unit title development, means that part of the principal unit subdivided to create the subsidiary unit title development that is not contained in a principal unit, accessory unit, or future development unit.

54. Common property means all of the land and fixtures that are part of the unit title development but not contained in a principal or accessory unit.
55. Based on this definition, common property of a UTBC includes the land, the apartment building (except for the spaces that comprise the units) and anything affixed to the building. In this context, a fixture such as a veranda that is attached to the exterior of the building and accessible through the common property would also form part of the common property, because it is an associated fixture.¹³ Such fixtures can be distinguished from items like pot plants and chairs that the UTBC purchases for use in the common area. These would not be fixtures and would not be part of the “common property” even though the UTBC owns them.
56. As a result, the land, building and anything affixed to the building would be excluded from the s 5(8AB) calculation as common property.

¹¹ *Oxford English Dictionary* (online ed, 3rd ed, Oxford University Press, 2008, OED Online Version June 2022, accessed 21 July 2022).

¹² *For-Profit Standards Glossary 2022*. The XRB draws its definitions from New Zealand Equivalent to International Accounting Standard (NZ IAS) 38.8 and 2018 New Zealand Conceptual Framework (CF) 4.3.

¹³ *Body Corporate 198900 v Bhana Apartments Ltd* [2015] NZHC 1620, at [35].

Inclusion of assets received as an exempt supply

57. Section 14 of the GST Act sets out exempt supplies. In the context of a unit title development, the main assets a UTBC may receive as exempt supplies would be supplies of financial services. This is because a UTBC may only act for the purpose of performing its duties or exercising its powers (s 78 of the UTA 2010). Most other exempt supplies involve transactions that would be outside the scope of what a UTBC can do.
58. Section 3 of the GST Act defines the term “financial services”. It is a detailed definition covering a wide range of different activities. Many of the activities within the definition of financial services relate to investments, including creating and assigning a debt security (ie, loans) and transferring ownership of shares in a company. Under s 130 of the UTA 2010, a UTBC can borrow money and invest any money in any investment authorised by law for the investment of trust funds.
59. As a result, the most likely examples of relevant assets will be bonds, shares or other financial investments. Other assets such as pot plants and chairs would not be included because, while they are not part of the “common property”, the UTBC would not have “received [them] as an exempt supply”.

The “total value held” of money and relevant assets

60. In most cases, a UTBC will find it easy to determine the “total value held” of money and relevant assets on the day it registers for GST. This is because its money and relevant assets will clearly be within its direct possession. However, in some cases a UTBC may place money and relevant assets outside its direct possession but still have control over them.
61. The Commissioner considers the scope of the words “total value held” in s 5(8AB) is broad. This means money or relevant assets that a UTBC provides to a third party to facilitate a transaction or as security for a transaction and held by that third party on registration day will generally remain part of the “total value held” for the purposes of s 5(8AB).
62. Where a third party holds money to facilitate a transaction, it would likely hold this money as a “stakeholder”. **IS 10/03: GST: Time of supply – Payments of deposits, including to a stakeholder**¹⁴ discusses when a person may be a stakeholder and how this impacts the time of supply. Essentially, where a UTBC has paid money to a person as stakeholder and requires that person to hold that money until a defined event takes place, the UTBC has not paid the amount to the supplier and the time of supply has not occurred because the UTBC has not yet made the payment. If the defined event

¹⁴ *Tax Information Bulletin* Vol 22, No 6 (July 2010): 7.

has taken place, the third party would hold the money not as a “stakeholder”, but rather as agent for the recipient. In this case, the money would not be part of the “total value held” as the UTBC no longer has control over this money.

63. This outcome is consistent with the purpose of s 5(8AB) and the context of the GST Act. A purpose of s 5(8AB) is to prevent a UTBC from using its ability to optionally register for GST to gain a tax advantage. A broad interpretation of s 5(8AB) prevents a UTBC from obtaining a benefit by putting money or relevant assets outside the scope of the provision.

Effect of “total value held” on money and assets

64. The following examples demonstrate how s 5(8AB) applies in different contexts:
- Example | Taura 3 provides a simple illustration of the money and assets covered by s 5(8AB).
 - Example | Taura 4 provides a more detailed illustration of s 5(8AB), highlighting how to treat money a stakeholder holds and which assets are relevant assets.

Example | Taura 3: Money and assets

Body Corporate Number 300,000 voluntarily applies to register on 8 November 2022, with effect from 1 December 2022.

On 1 December 2022, the UTBC has \$10,000 in its operating account and \$25,000 in its long-term maintenance fund. It also holds an investment in shares listed on the NZX that have a market value of \$11,000.

The effect of s 5(8AB) is that the UTBC is deemed to make a supply for consideration equal to \$46,000 on the date of registration and is required to return output tax of \$6,000. This is 3/23 of the total value of money and exempt assets (excluding common property) it held on the day it registered for GST.

The UTBC will include \$46,000 in its first GST return.

Example | Taura 4: Deemed supply on registration

Body Corporate Number 400,000 is an unregistered UTBC consisting of 25 apartments (principal units). Alan, a GST-registered owner of one of the apartments in the unit title development, suggested to Steve, the chairperson of the UTBC, that it should register for GST.

Steve, not knowing much about GST, discusses the matter with the body corporate committee and decides to raise it at the next AGM. At the AGM members agree that the UTBC should register as soon as possible, so Steve applies for registration on 15 June 2022, effective on 1 July 2022.

In making the calculation required under s 5(8AB), Steve notes that the body corporate holds:

- \$90,000 in money from the various funds;
- \$25,000 of shares and other investments; and
- assets worth \$2,600, which is the total value of tables, chairs and pot plants purchased for the ground floor common area.

Steve also notes that the UTBC had contracted with a builder to re-model the common area on the ground floor. As this is a substantial amount of work, the UTBC and the builder agreed that funds would be transferred to a solicitor until various stages of construction have been completed. The UTBC had transferred \$30,000 to its solicitor for this work.

Under the terms of the agreement, funds must be transferred to the builder on successful completion of various stages of the construction. On 29 June 2022 (2 days before registration), the UTBC and the builder agreed that the first stage of construction was complete. As a result, the solicitor should have transferred \$6,000 (as the agreed amount for the first stage of construction) to the builder. Steve raised this with the solicitor, who noted that the \$6,000 was paid out of the account on 3 July 2022.

The s 5(8AB) calculation

Steve must include the \$90,000 in money held in various accounts. He must also include the shares and other investments with a value of \$25,000.

Steve does not need to include the assets worth \$2,600 as the UTBC did not receive them as exempt supplies and they are not associated fixtures so do not form part of the common property. The value of the common property itself is not included.

Steve needs to include \$24,000 of the funds the solicitor held because they held these funds as stakeholder. The transaction to which these funds relate has not occurred for GST purposes. From 29 June, the solicitor held the \$6,000 as agent of the builder and paid it to the builder on 3 July. The solicitor held only \$24,000 as stakeholder on the registration day of 1 July 2022.

Steve now adds up the amounts:

$$\$90,000 + \$25,000 + \$24,000 = \$139,000$$

He then multiplies this amount by the tax fraction to work out the output tax liability on registration:

$$\$139,000 \times (3/23) = \$18,130$$

Body Corporate Number 400,000 must include \$139,000 in its first return due to s 5(8AB) of the GST Act.

It must also include the total value of other supplies made (eg, levies raised) during the period but will be able to claim an input tax deduction on supplies it received during the same period.

No taxable supply information need be issued

65. After registration, a UTBC will start issuing taxable supply information (previously a “tax invoice”) for its member supplies. However, it does not issue taxable supply information for the deemed supply under s 5(8AB). Because no person receives this supply, no person can claim an input tax deduction on it.

Deregistration

66. Ordinarily, a registered person who is carrying on a taxable activity will cease to be liable to be registered when the Commissioner is satisfied that the value of their taxable supplies will be under the threshold over the next 12 months (s 52(1)). In this case a person can voluntarily deregister for GST while continuing their taxable activity, after making a deregistration adjustment (ss 5(3) and 52(2)). A UTBC does not make a deregistration adjustment under s 5(3) in relation to the value of the common property. This is because the common property is treated as having a zero value for these purposes (s 10(7A)).
67. As the value of a UTBC’s supplies to its members is not included when calculating whether it is over the threshold, a UTBC will typically not become liable for registration. As a result, it would also be able to voluntarily deregister in most circumstances.
68. However, specific rules limit a UTBC’s ability to cancel its registration:
- If a UTBC was registered as at 26 February 2015, the cancellation can only take effect on a date after it applies for cancellation (s 52(8)).
 - If a UTBC is registered after 26 February 2015, the cancellation must take effect on the later of the date the UTBC applied for cancellation, and 4 years after registration date (s 52(9)). In essence, a UTBC must remain registered for at least 4 years.

69. If a UTBC ceases to have a taxable activity (ie, the unit plan is cancelled), registration would typically be cancelled with effect from the day the unit plan is cancelled.

Treatment of specific transactions for UTBCs

70. This section sets out the GST treatment of specific transactions involving registered UTBCs. Those UTBCs that are unregistered and are not planning to register do not need to review this section in detail. However, understanding the GST treatment may help a UTBC to decide whether to register, taking account of what the consequences are for registered and unregistered members.
71. The transactions we consider are:
- goods and services a UTBC acquires before registration;
 - services that a member supplies to the UTBC;
 - the supply of manager's accommodation;
 - ground rent; and
 - receiving one-off payments.

Goods and services a UTBC acquires before registration

72. Ordinarily, when a person registers for GST after operating their taxable activity while unregistered, they will have accumulated goods and services. These goods and services may have been subject to GST but, because the person was not registered, they were unable to claim an input tax deduction.
73. Under s 21B of the GST Act, a person can claim an input tax deduction in relation to the goods and services they acquired before registration that were charged with GST. However, this provision does not apply to a UTBC (s 21B(1)(a)). As a result, a UTBC is unable to claim input tax deductions for goods and services it acquired before it registered.
74. Section 21F will generally allow a UTBC to claim an input tax deduction when it disposes of these goods or services in the course or furtherance of its taxable activity or when it is deemed to do so on deregistration under s 5(3). Typically, the deduction available on disposal (or deemed disposal) under s 21F will match the output tax obligation on disposal (or deemed disposal). As discussed at [66], a UTBC does not make a deregistration adjustment under s 5(3) in relation to the value of the common property, but would make a deregistration adjustment in relation to the value of its other goods and services.

Services that a member supplies to a UTBC

75. In some cases, a registered member may provide services to a UTBC. Where the member simply charges and issues taxable supply information to the UTBC for the full value of the supply as part of normal business practice, no issue exists. However, sometimes it is suggested that the amount the UTBC owes should be offset against any levies it charges to the member.
76. The approach that the UTBC and the member agree on to satisfy the payment for these services does not change the correct accounting for GST purposes. The correct accounting for GST purposes is that there are two supplies. One supply is the services the member supplies to the UTBC, which is likely charged with GST at the standard rate under s 8(1) if the member is GST registered. The second supply is the UTBC's deemed supply to the member under s 5(8A). Both these supplies require the supplier(s) to account for GST output tax and may give rise to an input tax deduction for the recipient(s). Example | Taurira 5 illustrates the tax treatment in these circumstances.

Example | Taurira 5: Accounting for GST on supplies from members

Manu is a GST-registered electrician. He owns and lives in an apartment in Sunnydale Apartments, a unit title development in Tauranga. Manu operates his business from an office located in a different part of the city.

The UTBC of Sunnydale Apartments is GST registered and files its returns 2-monthly on an invoice basis.

One day the chairperson of the UTBC calls Manu to ask whether he could fix a few faulty electrical sockets and light fixtures in the common property of the development.

Manu agrees, completes the work and issues taxable supply information to the UTBC on 20 June 2023 for \$345 (\$300 for the services plus GST) for the electrical services.

On 5 July 2023 (within the same GST period), the UTBC levies each of its members \$920 (including GST). Given it is yet to pay Manu for his services, the UTBC and Manu agree to offset Manu's levy costs against the amount the UTBC owes for Manu's electrical services. As a result of this offset, Manu pays \$575 (ie, \$920 less \$345) to the UTBC. (Other members pay \$920 including GST.)

Both the UTBC and Manu will need to properly account for GST on the supplies in these ways:

- The UTBC will have an output tax liability of \$120 on the membership supply to Manu.
- The UTBC will have an input tax deduction of \$45 on its spending on electrical services.
- Manu will have an output tax liability of \$45 in relation to his supply of electrical services to the UTBC.
- Manu will not be entitled to an input tax deduction on his spending on UTBC levies. This is because the services received are not used for the principal purpose of making taxable supplies. Manu's apartment is solely his place of residence.

If, instead of an apartment, Manu's unit was a retail electrical store and office which he used in his taxable activity, Manu would be entitled to an input tax deduction in relation to the membership supply (for which levies are consideration). This is because the services he receives from the UTBC are used for the principal purpose of making taxable supplies.

Manager's accommodation

77. In some cases a UTBC will employ or engage a person to act as a manager for the unit title development. The terms of this engagement may include the manager living on-site. In such cases, the UTBC may provide the manager with an apartment to live in.
78. This arrangement will involve the UTBC providing a manager with a right to occupy an apartment in the unit title development (eg, by way of lease). The apartment may be owned by the UTBC (eg, as common property), or a member may have leased the apartment to the UTBC for that purpose.
79. Before determining the GST treatment of these transactions, we need to understand the nature of the supplies. Determining the nature of a supply for GST purposes involves considering the legal rights and obligations that the supplier and the recipient enter into, in light of the surrounding circumstances. The wording the parties use will not determine the GST treatment (see *Marac Life Assurance Limited v CIR*¹⁵ *Chatham Islands Enterprise Trust v CIR*¹⁶ and *CIR v New Zealand Refining Co Ltd*¹⁷). This means the GST consequences (if any) of the supply of manager's accommodation in these

¹⁵ (1986) 8 NZTC 5,086 (CA).

¹⁶ (1999) 19 NZTC 15,075 (CA).

¹⁷ (1997) 18 NZTC 13,187 (CA).

circumstances depends on the contractual arrangements between the UTBC, the manager, and in some cases, the member who leases the apartment.

Exempt supplies

80. Section 14 of the GST Act specifies certain supplies of goods and services which are exempt from GST. Some of those supplies relate to the supply of residential accommodation. Two of these could apply in the context of manager's accommodation.
81. When a UTBC supplies manager's accommodation, the key exempt supply is the supply of accommodation in a dwelling (s 14(1)(c)).
82. If a member supplies an apartment by way of lease to a UTBC which then uses it to supply manager's accommodation, the first supply by the member would likely be the exempt supply of a property by way of lease that is to be used for the principal purpose of accommodation in a dwelling by any person, other than a registered person in the course or furtherance of a taxable activity (s 14(1)(cb)).
83. Both these exemptions relate to "accommodation in a dwelling", which includes both the direct supply (s 14(1)(c)) and indirect supply – namely, sub-let accommodation (s 14(1)(cb)).
84. To determine whether these supplies are exempt supplies, it is necessary to determine whether the manager is being supplied with "accommodation in a dwelling".
85. The GST Act does not define "accommodation". Of relevance is the definition in the *Concise Oxford English Dictionary* that accommodation is "a room, building, or space in which someone may live or stay".¹⁸ Typically, where a manager needs to live on-site, a UTBC will provide them with an apartment to live in. As a result, it would use the apartment to provide accommodation.
86. More difficult to establish is whether the apartment satisfies the definition of dwelling in s 2:

dwelling, for a person,—

- (a) means premises, as defined in section 2 of the Residential Tenancies Act 1986,—
 - (i) that the person occupies, or that it can reasonably be foreseen that the person will occupy, as their principal place of residence; and
 - (ii) in relation to which the person has quiet enjoyment, as that term is used in section 38 of the Residential Tenancies Act 1986; and

¹⁸ 12th ed, Oxford University Press, New York (2011).

- (b) includes—
 - (i) accommodation provided to a person who is occupying the same premises, or part of the same premises, as the supplier of the accommodation and who meets the requirements of paragraph (a)(i);
 - (ii) any appurtenances belonging to or used with the premises;
 - (iii) despite paragraph (a)(ii), a residential unit in a retirement village or rest home when the consideration paid or payable for the supply of accommodation in the unit is for the right to occupy the unit; and
- (c) excludes a commercial dwelling

87. In summary, the definition of a dwelling is that it:
- is premises, as defined in s 2 of the RTA;
 - is a place that the person occupies, or it can reasonably be foreseen that the person will occupy, as their principal place of residence; and
 - is a place in relation to which the person has quiet enjoyment, as that term is used in s 38 of the RTA; but
 - excludes a commercial dwelling (as defined in s 2).
88. If the apartment is a commercial dwelling, it does not matter whether it meets the other requirements of a dwelling. In that case, both the UTBC's supply and, if applicable, the member's supply to the UTBC would be subject to GST under s 8(1).
89. For most unit title developments, the supply of manager's accommodation would not be a commercial dwelling. However, some unit title developments are run as serviced apartment complexes.
90. A serviced apartment typically involves some combination of the services of cleaning, laundry, rubbish removal, and provision of food or meals. A larger complex may involve services similar to those offered in a large hotel.
91. Even where the unit title development is run as a serviced apartment complex, it seems unlikely that a UTBC would provide a manager with accommodation in a serviced apartment. The accommodation provided is likely to be on a different basis from the accommodation provided to ordinary customers.

Dwelling

92. If the apartment that a UTBC uses to supply accommodation to the manager is not a commercial dwelling, it is necessary to consider whether it satisfies the other features of a dwelling. This is relevant to both the supply from the UTBC to the manager (s 14(1)(c)) and (where applicable), the supply from the member to the UTBC (s 14(1)(cb)).

Both these provisions rely on the definition of “dwelling”. This involves three main features:

- There are premises, as defined in s 2 of the RTA (see [93]).
- The person occupies, or it can reasonably be foreseen that the person will occupy, the premises as their principal place of residence (see from [94]).
- The person has quiet enjoyment, as that term is used in s 38 of the RTA (see from [96]).

Premises

93. The definition of dwelling refers to “premises” as defined in s 2 of the RTA. Section 2 of the RTA defines premises widely as including any means of shelter placed or erected on any land and intended for occupation on that land. An apartment in an apartment complex will satisfy this definition.

Used as a “principal place of residence”

94. The next requirement is that the manager uses the apartment as their “principal place of residence”. Principal place of residence is defined as a place that a person occupies as their main residence for the period to which the agreement for the supply of accommodation relates (s 2). This means that for the supplies to be exempt supplies, the manager needs to occupy the apartment as their main residence.
95. Where a UTBC supplies a manager an apartment that they live in full time for the duration of a contract or period of employment, it is likely this would be their “main residence”. However, where a manager does not live full time in the apartment (eg, they only stay at the apartment when they are “on call”), it is unlikely the apartment would be the manager’s main residence.

Quiet enjoyment as that term is used in s 38 of the RTA

96. Assuming the apartment is the manager’s main residence, the final requirement is that the manager must have quiet enjoyment in relation to the apartment, as that term is used in s 38 of the RTA. In summary, s 38 of the RTA provides that the tenant is entitled to quiet enjoyment of the premises without interruption and that the landlord must not cause or permit any interference with the tenant’s reasonable peace, comfort or privacy.
97. Whether the manager is provided with quiet enjoyment is a matter of law (ie, it is determined by the RTA and/or the contractual arrangements between the parties). Where a manager is provided with an apartment from which to manage a unit title development as a term of their engagement it is likely that the provision of the

apartment will be subject to the RTA and therefore the manager will have quiet enjoyment under s 38 of the RTA. Alternatively, the parties may otherwise agree either that the RTA applies or that the manager has quiet enjoyment as that term is used in s 38 of the RTA. The GST classification of this supply does not change if there is a breach of the manager's right to quiet enjoyment in a particular case.

Conclusion on manager's accommodation

98. Whether the supply of manager's accommodation in the context of a unit title development is an exempt supply or subject to GST depends on whether the apartment is used to provide accommodation in a dwelling.
99. For a unit title development that is run as a serviced apartment complex, the apartment owner and UTBC will need to first consider whether the apartment the UTBC supplies to the manager is a "commercial dwelling".
100. Where the apartment is not a commercial dwelling, the UTBC and member will need to consider whether the manager's use of the apartment satisfies the other requirements of the definition of dwelling. It will satisfy those requirements when:
 - the manager occupies, or it can be reasonably be foreseen that the manager will occupy, the premises as their principal place of residence; and
 - the manager has quiet enjoyment, as that term is used in s 38 of the RTA.
101. If the apartment is the manager's only residence and they live there full time, this will be their principal place of residence. If the manager has another residence that they live at when they are not on call, it is unlikely the manager's accommodation will be their principal place of residence.
102. Whether the manager has quiet enjoyment under the RTA depends on the facts of each case. If they have quiet enjoyment (and the apartment is their main home), the UTBC's supply of accommodation to the manager will be exempt under s 14(1)(c). If a member leases an apartment to the UTBC which uses it to provide accommodation to the manager, the member's supply of the apartment by way of lease to the UTBC will also be an exempt supply under s 14(1)(cb).

Ground rent

103. The general position under s 5(8A) is that all levies a UTBC receives from members are treated as consideration for supplies the UTBC makes to members. This means a UTBC must pay output tax on funds it levies or collects from its members. However, an exclusion applies to some amounts that relate to exempt supplies. Section 5(8A) provides:

5 Meaning of term supply

...

- (8A) For the purposes of this Act, a levy or other amount paid to a unit title body corporate by a member of the body corporate, **other than as reimbursement for a payment by the body corporate of an amount that would, if not charged to the body corporate, be payable by the member for an exempt supply to the member**, is treated as being consideration received for services supplied by the body corporate to the member.
[Emphasis added]

104. We call this exclusion the “levy exclusion” as it has the effect of excluding some levies or payments from being “consideration for services supplied”. Where the levy exclusion applies to a payment, the UTBC will not have an output tax liability to that extent.
105. The levy exclusion was inserted into s 5(8A) in 2022.¹⁹ It was intended to remedy an issue identified under the previous s 5(8A). This issue arose for a GST-registered UTBC of a unit title development on leasehold land. Under the previous s 5(8A), levy payments from members to a UTBC would be consideration for taxable supplies, even when the UTBC raised the levies to pay for an exempt supply of leasehold land by way of rental. This meant members were charged GST in relation to money the UTBC levied to pay for an exempt supply.
106. The supply of leasehold land by way of rental is an exempt supply to the extent the land is used for the principal purpose of accommodation in a dwelling erected on that land (s 14(1)(ca)).²⁰
107. Where a unit title development is on leasehold land, the UTBC is supplied with leasehold land and pays ground rent (consideration) to the landowner. To the extent this land is used for the principal purpose of accommodation in a dwelling, the supply of leasehold land by way of rental is an exempt supply. To the extent the supply is an exempt supply, it will not be charged with GST.
108. To pay ground rent, a UTBC will need to levy its members (membership supply). The levy exclusion may apply to these payments. This means a UTBC may not be liable for output tax for some amounts that members pay.
109. The levy exclusion is limited to the following circumstances:

¹⁹ Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022, s 8(3).

²⁰ The effect of this provision is the subject of a public ruling: **BR Pub 08/01: GST – When the supply of leasehold land is an exempt supply**, *Tax Information Bulletin* Vol 20, No 7 (August 2008): 13, discussed from [122].

- The amount a member paid is a reimbursement of an amount charged to the UTBC.
- If not charged, the amount would be payable by a member for an exempt supply to the member.

Reimbursement

110. The GST Act does not define the term “reimbursement”. The ordinary meaning in the *Oxford English Dictionary* is:²¹

reimbursement, n. The act of reimbursing a sum of money or person; repayment; an instance of this.

Reimburse, v. a. transitive. To repay (a sum of money which has been spent or lost).

111. The ordinary meaning of “reimbursement” involves the payment of a sum of money to another person to repay an amount that has already been spent. In practice, a UTBC is likely to levy its members before paying ground rent to the landowner. Despite this, the Commissioner considers the word “reimbursement” describes the relationship between the amount paid by the member and the amount of ground rent paid (or to be paid) by the UTBC.
112. The levy exclusion only applies to the extent the payment by the member relates to the cost of ground rent to the UTBC. If a UTBC levies funds which are to be used for multiple purposes (including the payment of ground rent), the levy exclusion will only apply to the extent those levied funds are for the subsequent payment of ground rent.

Exempt nature of supply

113. The levy exclusion only applies where, if the amount was not charged to the UTBC, it would be payable by the member for an exempt supply to the member. Where a member’s payment to the UTBC is a reimbursement of ground rent, the supply of leasehold land by way of rental for which ground rent is consideration must have been an exempt supply. This is important because the supply of leasehold land by way of rental is only an exempt supply to the extent the land is used for the principal purpose of accommodation in a dwelling (s 14(1)(ca)).
114. From [80], we discussed s 14(1) in relation to the supply of manager’s accommodation. The focus was on paragraphs (c) and (cb) relating to the direct and indirect supply of residential accommodation in a dwelling. For the supply of leasehold land by way of

²¹ *Oxford English Dictionary* (online ed, 3rd ed, Oxford University Press, December 2008, OED Online Version June 2022, accessed 21 July 2022).

rental, the relevant paragraph is (ca), requiring the **land** to be used for the principal purpose of accommodation in a dwelling erected on that land.

115. Section 14(1)(ca) is relevant to both the supply of leasehold land by way of rental (from the landowner to the UTBC) and the levy payment from the member to the UTBC. As members of a UTBC could use their units for different purposes, the overall supply of leasehold land by way of rental could be partially exempt. This means the levy exclusion would apply to levy payments from some members and not others. This could occur when a unit title development includes an apartment complex with shops on the ground floor (see from [122]).
116. As we discussed from [80] in relation to manager's accommodation, an apartment would be used for the principal purpose of accommodation in a dwelling in these circumstances:
- The apartment is not a commercial dwelling (ie, not a serviced apartment or other commercial dwelling as defined in s 2).
 - The occupant uses the apartment as their principal place of residence or main home.
 - The occupant has the right of quiet enjoyment as that term is used in s 38 of the RTA.
117. Because a unit title development will include both apartments and other areas (eg, car parks, storage lockers and common areas), it is necessary to determine:
- whether these areas would be within the scope of a "dwelling"; and
 - whether and to what extent the common area could be "used for the principal purpose of accommodation in a dwelling".
118. The definition of dwelling includes "appurtenances belonging to or used with the dwelling". The GST Act does not define the word "appurtenance". The courts considered the meaning of "appurtenances" in *Norfolk Apartments Ltd v CIR*²² and briefly in *Wairakei Court Ltd v CIR*.²³ Both cases concerned retirement villages. At issue was whether the definition of dwelling extended to common areas or facilities. Both courts held that appurtenances include areas that a person who has the right to occupy a dwelling has the right to use (whether exclusively or shared with others) along with their use of the dwelling. The focus is on whether the appurtenance belongs to or is used with the premises.
119. For a unit title development, appurtenances could include either or both of the following:

²² (1995) 17 NZTC 12,212 (CA).

²³ (1999) 19 NZTC 15,202 (HC).

- **Accessory units** which “belong to” a principal unit (it is not possible to deal with accessory units independently from the principal unit to which they relate): An accessory unit would typically be an appurtenance that “belongs to” the principal unit. If that principal unit were a dwelling, the accessory unit would be included within that dwelling. An accessory unit could contain a storage locker or a car park.
 - **Car parks contained on principal units:** While it is possible to deal with them independently, they may still be “used with” the premises that is the dwelling.
120. As a result, units that are outside the physical confines of an apartment may still form part of the dwelling because they are an appurtenance of the principal unit. This is consistent with the position in [IS 15/02: Goods and Services Tax – GST and retirement villages](#)²⁴ in the context of retirement villages and [IS 20/05: GST – Supplies of residences and other real property](#).²⁵
121. This means that for most residential unit title developments, the common areas, accessory units and car parks will not prevent the landlord’s supply of leasehold land by way of rental to the UTBC from being an exempt supply under s 14(1)(ca).

Mixed-use developments

122. Some unit title developments may have mixed uses. Some units or apartments may be used for accommodation in a dwelling, while others may not be. As we noted at [115], one example is an apartment complex with shops on the ground floor. Another is an apartment complex where apartments are not used as a dwelling but are instead used for other purposes. This would have an impact on apportionment where apartments are serviced apartments (ie, a commercial dwelling), or where apartments are used principally for short-stay accommodation (ie, not used “for the principal purpose of accommodation in a dwelling”).
123. In these cases, the supply of leasehold land by way of rental should be apportioned by the landowner to the extent it is exempt and non-exempt. Public Ruling BR 08/01 explains apportionment of supplies under s 14(1)(ca). It confirms the following points:
- The focus of the provision is on the **actual use** of the land.
 - The words “to the extent” contemplate apportionment in terms of the overall supply. This means it is not necessary for the entire piece of land to be used for the principal purpose of accommodation in a dwelling for s 14(1)(ca) to apply in relation to part of the supply.

²⁴ *Tax Information Bulletin* Vol 27, No 11 (December 2015): 6.

²⁵ *Tax Information Bulletin* Vol 32, No 7 (August 2020): 85.

- If a portion of the land is used for the principal purpose of accommodation in a dwelling, s 14(1)(ca) will apply to that extent. This means that a piece of land could be used 25% for the principal purpose of accommodation in a dwelling and 75% for non-exempt purposes and s 14(1)(ca) will apply to 25% of the supply.
124. While [BR 08/01](#) provides general guidance on apportionment, it does not discuss apportionment and the application of s 14(1)(ca) in the context of a unit title development.
125. For a unit title development, apportionment under s 14(1)(ca) will generally not need to take the common property into account. This is because the common property exists to facilitate the uses of the units within the development, so would be used proportionally in the same way as the units. Similarly, in residential unit title developments, accessory units and car parks will generally be appurtenances of the principal units and should not significantly affect the apportionment calculation.
126. However, where the accessory units and car parks are used disproportionately to the ways in which the principal units are used, this may affect the apportionment calculation. This situation could occur in a mixed-use development where all the car parks in the development are used with owner-occupied apartments. In this case, it would be necessary to consider both the principal units (owner-occupied apartments and commercial premises) and the car parks to determine the extent to which the land is used for the principal purpose of accommodation in a dwelling.

Mixed-use developments: method of apportionment

127. For a unit title development where the units are largely identical, it may be appropriate to apportion based on the number of units. If the units are not the same size, using floor space would be an appropriate method to apportion the supply of leasehold land by way of rental under s 14(1)(ca). This would involve calculating the floor space of units used for the principal purpose of accommodation in a dwelling, and those that are not used for those purposes. Comparing these two amounts would provide a percentage of the extent to which the land is used for those purposes. The landowner can use this percentage to determine the extent to which the supply of leasehold land by way of rental is an exempt supply.
128. Using floor space to apportion between taxable and exempt supplies is generally a reasonable basis to use for landowners for the supply of leasehold land by way of rental under s 14(1)(ca) (third-party supplies). However, it may not reflect how the UTBC apportions the cost of ground rent among members (membership supplies) through levies based on their ownership or utility interests (see [15]).

Apportionment by ownership or utility interests

129. Another method of apportionment that could be used with a unit title development on leasehold land is based on the ownership or utility interests assigned to the various units. A UTBC levies its members based on the ownership interest or utility interest assigned to their units.
130. As a UTBC already uses these interests to apportion costs to the development (including the cost of ground rent), it can be appropriate to also use these interests in the context of a unit title development on leasehold land.
131. Apportionment outcomes based on relative interests may differ in minor ways from those based on floor space. For example, two apartments may be of equal size, but one may be higher in the complex or have a better view. These factors may cause the interest attaching to the second apartment to be different to that for the first, unlike apportionment based on floor space.
132. Example | Taura 6 describes the GST treatment of ground rent for a UTBC that is fully residential. Example | Taura 7 shows the different calculations that a landowner and UTBC will need to undertake in apportioning supplies for mixed-use developments. Example | Taura 8 illustrates how if the landowner and the UTBC use different apportionment methods, their output tax liabilities may be different.

Example | Taura 6: Ground lease for residential apartment complex

Body Corporate Number 600,000 is a GST-registered UTBC for an apartment complex on leasehold land. It consists of 10 apartments that are all owner-occupied.

Magnus Land Ltd owns the land. Based on s 14(1)(ca), it issues an invoice to the UTBC for \$4,600 for the ground rent.

Combined with the cost of ground rent, the UTBC has total expenses of \$13,800 which it needs to levy members to pay for. Therefore, the UTBC issues invoices constituting taxable supply information to each of its 10 members for \$1,380. Each of these are split into two amounts:

- \$920 (including GST of \$120)²⁶ to cover the UTBC's general expenses.
- \$460 to cover the cost of ground rent to the UTBC.

The levy exclusion applies to the \$4,600 levied from owners to pay for ground rent. This amount is an amount that would, if not charged to the body

²⁶ \$800 x 1.15 = \$920.

corporate, be payable by the member for an exempt supply to the member. As each member lives in their apartment as their principal place of residence, the supply would be exempt under s 14(1)(ca).

As the levy exclusion will apply to the amount it collects for ground rent, the UTBC will only need to account for output tax on \$9,200. This is because the portion relating to ground rent is excluded from being consideration for a taxable supply.

The UTBC pays \$4,600 in ground rent to the landowner for the supply of leasehold land by way of rental (an exempt supply). This means the UTBC has not been charged GST and is not entitled to an input tax deduction.

Example | Taura 7: A mixed-use unit title development on leasehold land

Body Corporate Number 700,000 is a GST-registered UTBC for a unit title development on leasehold land. It has four principal units in total. These units consist of two commercial units on the ground floor (a restaurant and a clothing store) and two owner-occupied apartments on the first floor.

Magnus Land Ltd owns the land. Based on s 14(1)(ca), it determines that 50% of the land is used for the principal purpose of accommodation in a dwelling (as half of the development is used for residential accommodation). Accordingly, it issues an invoice constituting taxable supply information to the UTBC for \$4,945 for the ground rent, split into two amounts:

- \$2,300 + GST (\$2,645); and
- \$2,300 showing no GST.

In addition to the ground rent, the UTBC incurs expenses of \$4,000 (excluding GST) for which it needs to levy members. On the basis that each of the units has the same floor space, the UTBC levies the members to cover ground rent and other expenses:

- It levies the owners of the commercial units \$3,795 (inclusive of GST $((\$2,300 + \$1,000) \times 1.15)$).
- It levies the owner-occupiers \$3,450 (inclusive of GST). It does not charge GST on the portion of the levies subject to the levy exclusion $(\$2,300 + (\$1,000 \times 1.15))$.

Example | Tauria 8: Apportionment – floor space vs ownership interest

Body Corporate Number 800,000 is a registered UTBC for a unit title development on leasehold land. The development consists of two units of equal floor space. One of these units is used for residential purposes, while the other is used for commercial purposes.

The residential unit has an ownership interest based on a value of \$400,000.

The commercial unit has an ownership interest based on a value of \$600,000.

The UTBC has not assigned any specific utility interests, so these are the same as the ownership interests.

Third-party supply

The landowner charges ground rent of \$10,000. The landowner uses the respective floor space of the units to calculate the extent to which the land is used for the principal purpose of accommodation in a dwelling.

As a result, including GST on half of the supply of leasehold land by way of rental, the amount charged is \$10,750:

Landowner charge	Rent	GST	Total
Residential rent	\$5,000	Exempt	\$5,000
Commercial rent	\$5,000	\$750	\$5,750
Total			\$10,750

Membership supply

The UTBC levies its members to pay this amount based on their respective interests. Based on the interests, the ground rent will be divided between the owner of the residential unit \$4,000 and the commercial unit \$6,000 (before considering GST).

The levy exclusion does not apply to the \$6,000 charged to the commercial member. This amount will be consideration for a supply under s 5(8A), and as a result the membership supply in respect of the commercial unit will be charged with GST.

UTBC charge	Rent	GST	Total
Residential rent	\$4,000	Exempt	\$4,000
Commercial rent	\$6,000	\$900	\$6,900
Total			\$10,900

Result for the UTBC

In this case, using a different apportionment approach for the third-party supply results in the UTBC having more GST to pay. If the UTBC advised the landowner of the apportionment calculation based on respective interests, the landowner could apportion the supply of leasehold land by way of rental on that basis. If this occurred, they would avoid the mismatch.

Application in practice

133. Landowners who do not know the extent to which the land is being used for the principal purpose of accommodation in a dwelling and who are unable to obtain that information should standard rate the supply of leasehold land by way of rental. This ensures that any GST that may be payable for the supply is accounted for by the landowner at the appropriate time.

Summary of ground rent issue

134. Generally under s 5(8A) all levies a UTBC receives from members are subject to GST. However, levies it raises to pay ground rent to which s 14(1)(ca) applies are exempt from GST. In summary, the issue is as follows:
- Levies a UTBC receives from members as a reimbursement for a payment it makes of an amount that would, if not charged to the body corporate, be payable by the member for an exempt supply to the member can be treated as exempt from GST.
 - Where a UTBC charges a mixed levy to pay for ground rent and other expenses, only amounts that relate to the payment of ground rent would satisfy the levy exclusion in s 5(8A).
 - Where some units in a unit title development are used for the principal purpose of accommodation in a dwelling and some are not, the landowner's supply of leasehold land by way of rental to a UTBC should be apportioned between land used for the principal purpose of accommodation in a dwelling and land used for other purposes. The supply of leasehold land by way of rental is only an exempt supply to the extent it is used for the principal purpose of accommodation in a dwelling (s 14(1)(ca)).
 - When apportioning between land used for the principal purpose of accommodation in a dwelling and land used for other purposes, it is likely that apportionment based on the members' ownership or utility interests will be

appropriate. However, it may alternatively be reasonable to apportion on a unit basis where the units are largely the same size or using a floor area basis.

- If the method of apportionment used for the supply of leasehold land by way of rental (by the landowner to the UTBC) is different to the way the UTBC calculates levies to pay ground rent, the UTBC and the landowner may have different output tax obligations.

Receiving one-off payments

135. The final set of specific transactions we consider consists of one-off payments that UTBCs receive. Common payments for which people seek guidance on their GST treatment include:

- settlement payments and court awards;
- insurance payments; and
- Ministry of Business, Innovation and Employment (MBIE) payments under the Leaky Homes Financial Assistance Package (FAP).

Court awards and out-of-court settlements

136. Court awards are made by courts and tribunals and in binding arbitrations, usually in response to a wrongful act by one of the parties to a dispute. An out-of-court settlement refers to a payment to settle a dispute where the parties themselves agree on the nature of the settlement.

137. Whether receiving a court award or an out-of-court settlement payment results in a GST output tax liability depends on whether the payment is sufficiently connected to a supply to be consideration for that supply. [IS 23/07](#) explains the Commissioner's position on the GST treatment of court awards and out-of-court settlements.

138. In many cases the payment of a court award or out-of-court settlement will be compensation for a loss by the recipient. In these cases there is typically no GST consequence as the payment would not have sufficient connection to a supply made by the recipient. However, the legal obligations between the parties need to be assessed to determine whether the payment could, in fact, be for a supply made by the recipient.

139. Example | Tauria 9 demonstrates how the Commissioner's position could apply to a UTBC that receives a one-off payment.

Example | Tauria 9: Terminating or modifying service contract

Body Corporate Number 900,000 is the UTBC of a large unit title development. The development consists of over 150 apartments and multiple commercial premises on the ground floor. The development includes various amenities, such as a pool, gym and cinema, which are available to the occupants to use.

The UTBC has a service contract with Smoother Running Ltd, which provides a range of services in maintaining the amenities and the common property. The contract is for 5 years.

The contract runs relatively smoothly for 3 years until Smoother Running Ltd encounters staffing issues. It wants to consolidate its workforce and focus on other, smaller-scale projects. Given this, Smoother Running Ltd seeks to cancel the contract and allocate staff elsewhere.

Smoother Running Ltd negotiates an early termination to the contract, paying the UTBC \$20,000 for early release from the fixed-term contract. The payment is consideration for the UTBC's supply of a service, being the early release from a fixed-term contract. For this reason, it is subject to GST.

The UTBC would have an output tax liability in relation to this supply.

140. In some circumstances, the GST Act will deem specific GST consequences to occur in relation to a compensatory (or similar) payment. Two examples of these are addressed below, being:
- insurance payments, and
 - MBIE FAP payments

Insurance payments

141. When a registered person receives insurance payments, the result can be that they have an output tax liability based on the amount received. Like the deemed supply under s 5(8A) we discussed from [22], s 5(13) deems insurance payments to be consideration for a supply of services where a registered person receives them in the course or furtherance of their taxable activity.
142. Typically, payments a UTBC receives under the contract of insurance that s 135 of the UTA 2010 requires the UTBC to enter into will be subject to s 5(13). Here, a registered UTBC will need to return GST output tax on the payment. However, s 5(13) does not apply to all payments made under a contract of insurance.

143. The proviso to s 5(13) excludes some payments under a contract of insurance from being deemed to be a consideration for a taxable supply. These exclusions could apply to payments made under a UTBC's contract of insurance. One example is where the supply of the insurance is not a supply charged with tax under s 8(1). This could occur where a UTBC's insurer is not resident in New Zealand (and the insurer does not choose to treat the supply as made in New Zealand). In this case, the UTBC would not have claimed input tax deductions in relation to insurance premiums paid and would not account for output tax on receipt of an insurance payment.
144. The Commissioner has published guidance on the GST treatment of insurance payments:
- [IS 23/07](#) (referred above at [137]) provides general guidance on the application of s 5(13) from [83] to [94]. This Interpretation Statement explains some of the exceptions to s 5(13), including payments under a contract of insurance that was not made "in New Zealand".
 - [CS 20/01: GST liability for insurance and settlement payments to third party claimants – Section 5\(13\) of the Goods and Services Tax Act 1985](#) covers the circumstances where insurance payments go to registered third parties. While that Commissioner's Statement does not address UTBCs specifically, it explains that s 5(13) applies to the recipient when the payment goes directly to a registered third-party claimant instead of to the insured person.

MBIE FAP payments

145. MBIE FAP payments refer to payments that the Ministry of Business, Innovation and Employment makes to UTBCs under the Leaky Homes Financial Assistance Package. MBIE administers the FAP scheme on behalf of the Crown to make payments to eligible claimants as a contribution towards the repair of their leaky property.
146. [CS 20/05: GST treatment of payments received by a GST registered body corporate from the Ministry of Business, Innovation and Employment under the Leaky Homes Financial Assistance Package](#)²⁷ sets out the Commissioner's position on GST treatment of MBIE FAP payments that a registered UTBC receives. Essentially, the payment will be treated as being consideration for a supply of goods and services under s 5(6D) of the GST Act. A registered UTBC that receives a payment will need to include this amount in its GST return and pay any net GST output tax.
147. As we discussed from [37] and specifically in Example 1, where an unregistered UTBC receives an MBIE FAP payment, it would **not** make the UTBC liable to register. An unregistered UTBC would not need to account for GST for such an amount.

²⁷ *Tax Information Bulletin* Vol 32, No 10 (November 2020): 2.

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About this document | Mō tēnei tuhinga

Interpretation Statements are issued by the Tax Counsel Office. They set out the Commissioner's views and guidance on how New Zealand's tax laws apply. They may address specific situations we have been asked to provide guidance on, or they may be about how legislative provisions apply more generally. While they set out the Commissioner's considered views, Interpretation Statements are not binding on the Commissioner. However, taxpayers can generally rely on them in determining their tax affairs. See further [Status of Commissioner's advice](#) (December 2012). It is important to note that a general similarity between a taxpayer's circumstances and an example in an Interpretation Statement will not necessarily lead to the same tax result. Each case must be considered on its own facts.